

AMENDED IN SENATE MAY 10, 2016

AMENDED IN SENATE APRIL 14, 2016

AMENDED IN SENATE APRIL 4, 2016

**SENATE BILL**

**No. 1078**

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**Introduced by Senator Jackson**

February 17, 2016

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An act to amend Sections 1281.85 and 1281.9 of, and to add Section 1281.65 to, the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

SB 1078, as amended, Jackson. Civil procedure: arbitration.

Existing law governs arbitration in civil proceedings. Under existing law, a neutral arbitrator is defined as one who is selected jointly by the parties or by the parties' arbitrators, or is appointed by the court if the parties or their arbitrators cannot jointly select an arbitrator. Existing law requires a person selected to serve as a neutral arbitrator to disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt as to the proposed neutral arbitrator's impartiality. Existing law requires the disclosure to include, among other things, whether or not the proposed neutral arbitrator has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral with a party to the proceeding, or is participating in, or has participated within the last 2 years in, discussions regarding such prospective employment or service.

This bill, in a consumer arbitration case, would also require the disclosure of any solicitation made within the last 2 years by, or at the direction of, a private arbitration company to a party or lawyer for a party. The bill would prohibit the solicitation of a party or lawyer for

a party during the pendency of the arbitration. The bill would also prohibit an arbitrator, from the time of appointment until the conclusion of the arbitration, from entertaining or accepting any offers of employment, offers of new professional relationships, or offers of employment as a dispute resolution neutral in another case from a party or lawyer for a party in the pending arbitration.

Existing law requires a court to vacate an arbitration award if it determines ~~certain that a specified circumstance exists~~; *that certain circumstances exist*.

This bill would authorize a party to recover arbitration proceeding costs from a private arbitration company *or arbitrator* if the arbitration award is vacated by the court based on a determination ~~of the existence of one of these circumstances~~. ~~The bill would also authorize a party to petition the court to recover arbitration proceeding costs from a private arbitration company if the arbitrator is dismissed during the pendency of the arbitration because of a violation of the Judicial Council ethical standards or a violation of the disclosure requirements described above.~~ *that there was corruption in any of the arbitrators, the rights of the party were substantially prejudiced by misconduct of a neutral arbitrator, or the arbitrator making the award either failed to timely disclose a ground for disqualification, as specified, or the arbitrator was subject to disqualification, as specified, but failed to disqualify himself or herself after receiving a timely demand to disqualify*.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1281.65 is added to the Code of Civil
- 2 Procedure, to read:
- 3 1281.65. From the time of appointment until the conclusion
- 4 of the arbitration, an arbitrator shall not entertain or accept either
- 5 of the following:
- 6 (a) Any offers of employment or new professional relationships
- 7 as a lawyer, expert witness, or consultant from a party or lawyer
- 8 for a party in the pending arbitration.
- 9 (b) Any offers of employment as a dispute resolution neutral in
- 10 another case involving a party or lawyer for a party in the pending
- 11 arbitration unless all parties to the pending arbitration, including
- 12 the lawyers in the arbitration, have conferred and agreed in writing,

1 before any solicitation of the arbitrator, to allow offers of future  
2 employment as a dispute resolution neutral to be made to the  
3 arbitrator.

4 SEC. 2. Section 1281.85 of the Code of Civil Procedure is  
5 amended to read:

6 1281.85. (a) Beginning July 1, 2002, a person serving as a  
7 neutral arbitrator pursuant to an arbitration agreement shall comply  
8 with the ethics standards for arbitrators adopted by the Judicial  
9 Council pursuant to this section. The Judicial Council shall adopt  
10 ethical standards for all neutral arbitrators effective July 1, 2002.  
11 These standards shall be consistent with the standards established  
12 for arbitrators in the judicial arbitration program and may expand  
13 but shall not limit the disclosure and disqualification requirements  
14 established by this chapter. The standards shall address the  
15 disclosure of interests, relationships, or affiliations that may  
16 constitute conflicts of interest, including prior service as an  
17 arbitrator or other dispute resolution neutral entity,  
18 disqualifications, acceptance of gifts, and establishment of future  
19 professional relationships.

20 (b) Subdivision (a) does not apply to an arbitration conducted  
21 pursuant to the terms of a public or private sector collective  
22 bargaining agreement.

23 (c) The ethics requirements and standards of this chapter are  
24 nonnegotiable and shall not be waived.

25 ~~(d) A party may recover costs incurred in an arbitration~~  
26 ~~proceeding from a private arbitration company if the arbitration~~  
27 ~~award is vacated pursuant to Section 1286.2. A party may also~~  
28 ~~petition the court to recover costs incurred in an arbitration~~  
29 ~~proceeding from a private arbitration company if the arbitrator is~~  
30 ~~dismissed during the pendency of the arbitration because of a~~  
31 ~~violation of the ethical standards adopted by the Judicial Council~~  
32 ~~pursuant to this section or a violation of the disclosure requirements~~  
33 ~~established by this chapter.~~

34 *(d) If an arbitration award is vacated pursuant to paragraph*  
35 *(2), (3), or (6) of subdivision (a) of Section 1286.2 because of a*  
36 *violation of the ethical standards adopted by the Judicial Council*  
37 *pursuant to this section or a violation of the disclosure*  
38 *requirements established by this chapter, a party may recover any*  
39 *costs incurred in the arbitration proceeding from the private*  
40 *arbitration company or from the arbitrator to whom the costs were*

1 *paid. For purposes of this paragraph, “costs” include filing fees,*  
2 *administrative costs, arbitrator fees, or any other fees paid to the*  
3 *private arbitration company or arbitrator.*

4 SEC. 3. Section 1281.9 of the Code of Civil Procedure is  
5 amended to read:

6 1281.9. (a) In any arbitration pursuant to an arbitration  
7 agreement, when a person is to serve as a neutral arbitrator, the  
8 proposed neutral arbitrator shall disclose all matters that could  
9 cause a person aware of the facts to reasonably entertain a doubt  
10 that the proposed neutral arbitrator would be able to be impartial,  
11 including all of the following:

12 (1) The existence of any ground specified in Section 170.1 for  
13 disqualification of a judge. For purposes of paragraph (8) of  
14 subdivision (a) of Section 170.1, the proposed neutral arbitrator  
15 shall disclose whether or not he or she has a current arrangement  
16 concerning prospective employment or other compensated service  
17 as a dispute resolution neutral or is participating in, or, within the  
18 last two years, has participated in, discussions regarding such  
19 prospective employment or service with a party to the proceeding.

20 (2) Any matters required to be disclosed by the ethics standards  
21 for neutral arbitrators adopted by the Judicial Council pursuant to  
22 this chapter.

23 (3) The names of the parties to all prior or pending noncollective  
24 bargaining cases in which the proposed neutral arbitrator served  
25 or is serving as a party arbitrator for ~~any~~ a party to the arbitration  
26 proceeding or for a lawyer for a party and the results of each case  
27 arbitrated to conclusion, including the date of the arbitration award,  
28 identification of the prevailing party, the names of the parties’  
29 attorneys, and the amount of monetary damages awarded, if any.  
30 In order to preserve confidentiality, it shall be sufficient to give  
31 the name of any party who is not a party to the pending arbitration  
32 as “claimant” or “respondent” if the party is an individual and not  
33 a business or corporate entity.

34 (4) The names of the parties to all prior or pending noncollective  
35 bargaining cases involving ~~any~~ a party to the arbitration or lawyer  
36 for a party for which the proposed neutral arbitrator served or is  
37 serving as neutral arbitrator, and the results of each case arbitrated  
38 to conclusion, including the date of the arbitration award,  
39 identification of the prevailing party, the names of the parties’  
40 attorneys and the amount of monetary damages awarded, if any.

1 In order to preserve confidentiality, it shall be sufficient to give  
2 the name of any party not a party to the pending arbitration as  
3 “claimant” or “respondent” if the party is an individual and not a  
4 business or corporate entity.

5 (5) Any attorney-client relationship the proposed neutral  
6 arbitrator has or had with ~~any~~ a party or lawyer for a party to the  
7 arbitration proceeding.

8 (6) Any professional or significant personal relationship the  
9 proposed neutral arbitrator or his or her spouse or minor child  
10 living in the household has or has had with ~~any~~ a party to the  
11 arbitration proceeding or lawyer for a party.

12 (7) For a consumer arbitration case, any solicitation made within  
13 the last two years by, or at the direction of, the private arbitration  
14 company to a party or lawyer for a party to the consumer  
15 arbitration. During the pendency of the consumer arbitration, no  
16 solicitation shall made of a party to the arbitration or of a lawyer  
17 for a party to the arbitration. For purposes of this paragraph,  
18 “solicitation” includes an oral or written request for arbitration  
19 business, but does not include advertising directed to the general  
20 public or communications indicating a general willingness to serve  
21 as an arbitrator or private arbitration company.

22 (b) Subject only to the disclosure requirements of law, the  
23 proposed neutral arbitrator shall disclose all matters required to  
24 be disclosed pursuant to this section to all parties in writing within  
25 10 calendar days of service of notice of the proposed nomination  
26 or appointment.

27 (c) For purposes of this section, “lawyer for a party” includes  
28 any lawyer or law firm currently associated in the practice of law  
29 with the lawyer hired to represent a party.

30 (d) For purposes of this section, “prior cases” means  
31 noncollective bargaining cases in which an arbitration award was  
32 rendered within five years ~~prior to~~ *before* the date of the proposed  
33 nomination or appointment.

34 (e) For purposes of this section, “any arbitration” does not  
35 include an arbitration conducted pursuant to the terms of a public  
36 or private sector collective bargaining agreement.